

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICARDO M. ROGERS,	§
	§ No. 373, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 9807019431
	§ 3020776481
Plaintiff Below-	§
Appellee.	§

Submitted: July 15, 2009

Decided: July 23, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 23rd day of July 2009, it appears to the Court that:

(1) On May 4, 2009, the Superior Court found that the defendant-appellant, Ricardo M. Rogers, had committed a violation of probation (“VOP”) with respect to his sentences in Criminal Identification Numbers 9807019431 and 3020776481. The Superior Court re-sentenced Rogers on that same date. Any appeal from Rogers’ VOP sentences should have been

filed on or before June 3, 2009.¹ However, Rogers did not file his pro se appeal in this Court until June 29, 2009.²

(2) On June 29, 2009, the Clerk issued a notice to Rogers to show cause why his appeal should not be dismissed as untimely filed. Rogers filed a response to the notice to show cause on July 7, 2009. In the response, Rogers states that he asked his attorney to file an appeal, both orally and in writing, but that his attorney did not respond. When he realized the deadline was approaching, he filed a notice of appeal, but erroneously filed it in the Superior Court.

(3) The State filed a reply to Rogers' response to the notice to show cause. In its reply, the State urges that, in these circumstances, the matter should be remanded to the Superior Court for a determination of whether Rogers instructed his attorney to file an appeal.³ If the Superior Court determines that Rogers instructed his attorney to file an appeal, then its May

¹ Supr. Ct. R. 6(a) (ii).

² The record reflects that Rogers erroneously filed his notice of appeal previously in the Superior Court. However, that appeal, which was filed on June 4, 2009, also was untimely.

³ *Roe v. Flores-Ortega*, 528 U.S. 470, 485 (2000). Although a probationer has no absolute right to counsel in VOP proceedings, counsel, at a minimum, has an ethical obligation to inform his client of the right to appeal a VOP sentence. *Harris v. State*, Del. Supr., No. 451, 2006, Holland, J. (July 5, 2007).

4, 2009 sentencing order should be vacated and Rogers re-sentenced, with the assistance of counsel, so that a timely appeal may be filed.⁴

(4) In the interest of justice, we conclude that this matter should be remanded to the Superior Court for further proceedings in accordance with the above.

NOW, THEREFORE, IT IS ORDERED that this matter is hereby REMANDED to the Superior Court for further proceedings in accordance herewith. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴ *Roe v. Flores-Ortega*, 528 U.S. at 478.